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Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

MARIO ROJO-ALANIZ, ET. AL.  
Defendants.

**CASE NO. 1:20-CR-00174 DAD-BAM**

**STIPULATION TO CONTINUE STATUS  
CONFERENCE AND ORDER THEREON**

Date: December 9, 2020  
Time: 1:00 p.m.  
Honorable Barbara A. McAuliffe

The United States of America, by and through MCGREGOR W. SCOTT, United States Attorney, and KATHLEEN A. SERVATIUS, Assistant United States Attorneys, and all defendants **except for Sandra Diaz**, by and through their respective attorneys of record, hereby stipulate to continue the status conference in this case from December 9, 2020 until February 24, 2021 at 1:00 p.m.

On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California until further notice. This General Order was entered to address public health concerns related to COVID-19. Further, pursuant to General Order 611 and 620, this Court's declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020 continuing this Court's judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 1, 2021.<sup>1</sup>

<sup>1</sup> A judge "may order case-by-case exceptions" at the discretion of that judge "or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 Although the General Orders and declaration of emergency address the district-wide health  
2 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision  
3 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record  
4 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-  
5 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such  
6 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153  
7 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth explicit  
8 findings on the record “either orally or in writing”).

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
10 and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of judicial  
11 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the  
12 judge granted such continuance on the basis of his findings that the ends of justice served by taking such  
13 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §  
14 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the  
15 case, either orally or in writing, its reason or finding that the ends of justice served by the granting of  
16 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

17 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”  
18 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address  
19 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has  
20 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-  
21 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d  
22 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.  
23 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to  
24 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).  
25 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated  
26 by the statutory rules.

27 In light of the societal context created by the foregoing, this Court should consider the following  
28 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-

1 justice exception, § 3161(h)(7) (Local Code T4).<sup>2</sup> If continued, this Court should designate a new date  
 2 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
 3 pretrial continuance must be “specifically limited in time”).

4 The parties request that time be excluded between December 9, 2020 and February 24, 2021 for  
 5 the following reasons: the defendants need additional time to review the forthcoming supplemental  
 6 discovery, consult with their clients, and conduct further investigation. Supplemental discovery in the  
 7 form of several wire taps, drug seizures, approximately 10,000 pages of discovery, and digital discovery  
 8 in the form of several gigabytes will be available to the defense the week of November 30, 2020. The  
 9 proposed status conference date represents the earliest date that all counsel are available thereafter,  
 10 taking into account counsels’ schedules, defense counsels’ commitments to other clients, and the need  
 11 for preparation in the case and further investigation. In addition, the public health concerns cited by  
 12 General Order 611, 612, and 617 and presented by the evolving COVID-19 pandemic, an ends-of-justice  
 13 delay is particularly apt in this case because counsel or other relevant individuals have been encouraged  
 14 to telework and minimize personal contact to the greatest extent possible. It will be difficult to avoid  
 15 personal contact should the hearing proceed.

16 The parties further believe that time should be excluded, in that failure to grant the requested  
 17 case schedule would unreasonably deny the defendants continuity of counsel, and unreasonably deny  
 18 both the defendants and the government the reasonable time necessary for effective preparation, taking  
 19 into account the parties’ due diligence in prosecuting this case. 18 U.S.C. Section 3161(h)(7)(B)(iv).  
 20 Based on the above-stated findings, the ends of justice served by the schedule as requested outweigh the  
 21 interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial

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 27 <sup>2</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

Act. Therefore, the parties request that the Court exclude the time until the new status conference date from calculations under the Speedy Trial Act.

Dated: November 23, 2020

MCGREGOR W. SCOTT  
United States Attorney

/s/ Kathleen A. Servatius  
KATHLEEN A. SERVATIUS  
Assistant United States Attorney

Dated: November 23, 2020

/s/ Virna L. Santos  
Attorney for Mario Rojo-Alaniz

Dated: November 23, 2020

/s/ Harry M. Drandell  
Attorney for Defendant Julio Jimenez

Dated: November 23, 2020

/s/ Richard Beshwate  
Attorney for Jose Gutierrez-Callado

Dated: November 23, 2020

/s/ Daniel Harrelson  
Attorney for Defendant Francisco Vega-Guzman

Dated: November 23, 2020

/s/ Nicholas Reyes  
Attorney for Defendant Juan Martinez-Reyes

### **ORDER**

IT IS HEREBY ORDERED that the status conference in this case, **except for Defendant Sandra Diaz**, be continued from December 9, 2020 until February 24, 2021 at 1:00 p.m. The status conference for Sandra Diaz shall remain on calendar for December 9, 2020 at 1:00 p.m.

IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of December 9, 2020 until February 24, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by

1 the Court at the parties' request on the basis of the Court's finding that the ends of justice served by  
2 taking such action outweigh the best interest of the public and the defendant in a speedy trial.

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5 IT IS SO ORDERED.

6 Dated: November 24, 2020

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE